HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.5916 OF 2007

Between:

S. Jaffar Sahib ...Petitioner

AND

State of Andhra Pradesh,
represented by its Secretary,
Revenue (Services-I) Department,
Hyderabad and two others. ...Respondents

:: O R D E R ::

Counsel for the petitioner : Sri J. Janakirami Reddy

29th March, 2007

Per G.S.SINGHVI, C.J.

Having failed to persuade the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') to entertain the application filed by him in the year 2005 for quashing the appointment of Sri Satyanarayana Murthy (respondent No.2) and Sri R. Ramakrishnaiah (respondent No.3) to the Andhra Pradesh Civil Services (Executive Branch) (hereinafter referred to as 'the service') against the posts advertised by the Andhra Pradesh Public Service Commission (for short, 'the Commission') on 28-1-1980, and for issue of a mandamus to the State Government to re-consider his case for appointment as Deputy Collector with retrospective effect from 1981, the petitioner has filed this petition under Article 226 of the Constitution of India.

The Facts:

While he was working as Mandal Revenue Officer, the petitioner applied for recruitment to the service for which advertisement had been issued by the Commission on 28-1-1980. He secured 360 marks out of 600 in the written test and 94 out of 200 in the oral interview. His name is said to have been placed at No.3 among the Open Category candidates, but, he was not appointed. After almost 16 years, the petitioner submitted representation dated 14-5-1997 for correction of what he claimed to be an apparent mistake in the select list. This was followed by some more representations. One of his representations was rejected by the State Government vide communication dated 16-8-1999. Another representation made by the petitioner was rejected by the government vide letter No.70096/Ser.I(1)/99, dated 14-12-1999. The same reads as under:

"GOVERNMENT OF ANDHRA PRADESH
REVENUE (SER.I) DEPARTMENT

Letter No.70096/Ser.I(1)/99 Dated 14-12-1999

From
The Addl. Secretary to Government,
Revenue (Ser.I) Department,
A.P. Secretariat,
Hyderabad.

To
Sri S. Jaffer Sahib,
H.No.62/198, 3rd Portion,
II Floor, Ameer Bldg.,
Chidambarao Street,
KURNOOL.

Sir,

Sub:- Public Services – A.P. Civil Services (Ex.Br) – Deputy Collectors – Sri S. Jaffer Sahib – Request for appointment as Deputy Collector under direct recruitment for the year 1980-81 – Review Representation – Reg.

Ref:- 1) Government Letter No.32238/Ser.I(1)/97, Revenue (Ser.I) Dept., dated 16-8-1999.
2) From Sri S. Jaffer Sahib, Review Representation dated 24-8-1999.

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I am directed to inform that the representation of Sri S. Jaffer Sahib for his appointment as Deputy Collector under direct recruitment for the year 1980-81 has been re-examined in detail as per rules, and it is found that there are no grounds to consider his request. The reply in the matter sent vide reference 1st cited holds good.

Yours faithfully,
Sd/-
For Addl. Secretary to Government

Copy to:
The Secretary, A.P. Public Service Commission, Hyderabad."

After more than five years, the petitioner again represented for re-consideration of his case, but his request was turned down by the State Government vide letter No.14587/Ser.I(1)/2005-1, dated 15-2-2005, which reads as under:

"GOVERNMENT OF ANDHRA PRADESH
REVENUE (SERVICES.I) DEPARTMENT

Letter No.14587/Ser.I(1)/2005-1

From
Deputy Secretary to Government,
Revenue (Ser.I) Department,
A.P. Secretariat,
Hyderabad.

To
Sri S. Jaffer Sahib,
H.No.62/198, III Portion,
II Floor, Ameer Building,
Chidambarao Street,
KURNOOL-518 001.

Sir,

Hyderabad, dated 15th February, 2005

Sub:- PS – APCS – Request for appointment as D.C. -
– Representation – Reg.
Ref:- 1) Govt. Lr. No.32238/Ser.I(1)/97, Revenue (Ser.I)
Dept., dated 16-8-1999.
2) Govt. Lr. No.40096/Ser.I(1)/99, dated 14-12-1999
3) From Sri Jaffar Sahib, Kurnool Representation
dated 4-2-2005 & 8-2-2005.

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I am directed to inform that the representation of Sri S. Jaffar Sahib for appointment as Dy. Collector under D.R. quota for the year 1980-81 has been re-examined in the Government as per rules and it is observed that he was already informed that it is not feasible to consider the claim for appointment as Deputy Collector vide Government letter 1st cited and he was again informed reiterating the earlier orders vide Government letter 2nd cited. It is again clarified that

there are no fresh grounds to reconsider the above orders at this stage, after 25 years.

Yours faithfully,
Sd/-
For Deputy Secretary to Government"

Immediately after receiving communication dated 15-2-2005, the petitioner filed an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act') for quashing the same and also for issue of a direction to respondent No.1 to appoint him as Deputy Collector with all consequential benefits.

The learned Judicial Member of the Tribunal held that the application was highly belated and there was no reason to interfere with the selection and appointments made pursuant to the notification issued in 1981.

Sri J. Janakirami Reddy, learned counsel for the petitioner fairly admitted that the representations made by his client were twice rejected in 1999, but argued that the Tribunal committed a serious jurisdictional error by dismissing the application on the ground of delay because rejection of the petitioner's representation vide letter dated 15-2-2005 gave him fresh cause of action and the application was filed within one month of the receipt of that communication.

In our opinion, there is no merit in the argument of the learned counsel and the writ petition is liable to be dismissed summarily. As per the petitioner's own assertion, the selection for recruitment to the service was made by the Commission in 1980-81 and the selected candidates were appointed in 1981. Therefore, the cause for challenging the selection made by the Commission accrued to the petitioner in 1981. He could have filed an application before the Tribunal constituted under Article 371-D(5) of the Constitution of India

and prayed for quashing the selection and appointment of respondent Nos.2 and 3 and also for issue of a direction for his own appointment as Deputy Collector. However, the fact of the matter is that he did not avail that remedy. Instead, after 16 years of the finalization of the selection, he represented for re-consideration of his case by way of rectification of the so-called mistake committed at the time of preparation of the select list. His representations were rejected on 16-8-1999 and again on 14-12-1999. By that time, the Tribunal constituted under Article 371-D(5) had been converted into State Tribunal under Section 4 of the Act. The petitioner could have filed an application under the Act within six months from the date of rejection of his representation i.e. 16-8-1999, but he did not file application in terms of Section 19 read with Section 21(2) of the Act. Rather, after five years and six months, he made representations dated 4-2-2005 and 8-2-2005 and reiterated his claim for appointment on the basis of the selection held in 1980-81. He filed an application under Section 19 of the Act on 12-3-2005 by projecting letter dated 15-2-2005 as the starting point of limitation. The Tribunal entertained the application, but finally dismissed the same on the ground of delay and laches.

Before proceeding further, it will be useful to notice the provisions of Sections 19, 20 and 21 of the Act. The same are as under:

> "**19. Applications to Tribunals.-**(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.
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> Explanation- For the purpose of this sub-section, "order" means an order made-
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> (a) by the Government or a local or other authority within the

territory of India or under the control of the Government of India or by any corporation or society owned or controlled by the Government; or

(b) by an officer, committee or other body or a agency of the Government or a local or other authority or corporation or society referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee, if any, not exceeding one hundred rupees in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not 30 satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

20. Application not to be admitted unless other remedies exhausted.-(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) If a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.
(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation.- (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub- section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-
(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b) of sub-section (1) or within a period of six

months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he has sufficient cause for not making the application within such period."

An analysis of the above reproduced provisions shows that a person aggrieved by an order pertaining to any matter, which falls within the jurisdiction of the Tribunal can file an application for redressal of his grievance { Section 19(1) }. Sub-section (3) of Section 19 casts a duty on the Tribunal to make appropriate enquiry for satisfying itself that the application is fit for adjudication or trial. Then and then only, the application can be admitted, else the same is liable to be summarily rejected. Section 20(1) imposes a bar to the admission of an application unless the Tribunal is satisfied that the applicant had availed all the remedies available to him under the relevant service rules as to redressal of grievances. The expression 'service rules as to redressal of grievances' has been defined in Section 3(r) to mean, the rules, regulations, orders or other instruments or arrangements made by the employer for redressal of grievances of the employees in relation to service matters. Section 21 prescribes the period of limitation. It imposes a bar to the entertaining of the application if the same is not filed within limitation. Sub-section (2) of Section 21 provides for limitation for filing application in respect of a cause which accrued during the period of three years immediately preceding the date on which the jurisdiction, power and authority of the Tribunal became exercisable under the Act. Sub-section (3) empowers the Tribunal to condone the delay in filing of the application.

If the petitioner's case is considered in the light of the above analysis of the statutory provisions, we do not have the slightest hesitation to hold that the application filed by him on 12-3-2005 was clearly barred by time and the Tribunal did not have the jurisdiction, power or authority to entertain the same. At the cost of repetition, we consider it necessary to mention that appointments to the service were made in the year 1981. The petitioner could have challenged the same by filing an application before the Tribunal constituted under Article 371-D(5) of the Constitution. This, he did not do and made a representation after a long time gap of 16 years without any tangible explanation as to why he did not avail the remedy by filing an application before the Tribunal within a reasonable time from the date of accrual of cause of action. After the establishment of Tribunal under Section 4 of the 1985 Act, he could have filed application within the period of limitation prescribed under Section 21(2) of the Act. However, the fact of the matter is that he did not avail the remedies available to him by filing application within the period of limitation. He did so after more than five years and six months of the rejection of his representations vide letters dated 16-8-1999 and 14-12-1999. Thus, the application filed by him on 12-3-2005 was clearly barred by time, and the same ought to have been dismissed by the Tribunal as barred by limitation because the petitioner had not applied under Section 21(3) for condonation of delay. The mere fact that the Tribunal has not directed its attention to Section 21(2) of the Act and has dismissed the application on the ground of delay and laches is inconsequential. In our considered view, the application was clearly barred by time and, at this belated stage, we do not see any reason or justification to disturb the appointments made in 1981 or issue a direction to respondent No.1 to appoint the petitioner against the vacancies notified in 1981

ignoring the fact that during this long interregnum, many selections have been made and many persons have been appointed to the service by direct recruitment as well as promotion. Any order by the Court would unsettle the settled position and adversely affect unknown number of persons who are not parties to the writ petition.

The issue deserves to be considered from another angle. As per his own showing, the representations made by the petitioner were rejected by the government vide letters dated 16-8-1999 and 14-12-1999. It is extremely doubtful whether the representations made after 16 years of the accrual of the cause of action could have been entertained by the government. But, even if for a moment it is assumed that the rejection of the representations in 1999 gave a cause to the petitioner to seek intervention of the Tribunal, the reiteration of the government's decision in 2005 in the context of the representations dated 4-2-2005 and 8-2-2005 did not give him a fresh cause and the Tribunal was not at all justified in entertaining and registering the application filed on 12-3-2005. Learned counsel for the petitioner could not draw our attention to any rule, regulation, order, instruction or arrangement under which his client could make successive representations and that too after long time gap of more than five years for redressal of his so-called grievance. Therefore, the petitioner cannot derive any help from Section 20(1)(a) read with Section 3(r) of the Act.

In view of the above discussion, we hold that rejection of the petitioner's representation vide letter dated 15-2-2005 did not give him cause to seek invalidation of the appointments made in 1981 or claim appointment with retrospective effect from that year.

Before parting with the case, we consider it imperative to take notice of an extremely disturbing trend. It appears that applications

filed before the Tribunal under Section 19(1) are entertained as a matter of course without examining the same in the context of sub-section (3) of Section 19 and this appears to be the reason why the application filed by the petitioner after 24 years of the finalization of selection was entertained and decided by the Tribunal. We are sure, if the learned Member of the Tribunal had bothered to examine the petitioner's case with reference to the provisions of Section 19(3) read with Section 21(2), then the same would have been dismissed at the threshold without requiring the opposite parties to file counter for defending the rejection of the petitioner's claim for retrospective appointment as Deputy Collector or for quashing the appointments of respondent Nos.2 and 3.

We hope and trust that in future, the learned Members of the Tribunal would examine the applications with reference to Section 19(3) and pass appropriate order before issuing notice to the opposite party. It needs no emphasis that notice issued ex debito justiatiae causes immense injury to the opposite parties and puts the State to unbearable financial burden in defending frivolous and vexatious applications.

For the reasons mentioned above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.7558 of 2007 filed by the petitioner for early hearing of the petition is disposed of as infructuous.

G.S.SINGHVI, C.J.

29th March, 2007.

C.V.NAGARJUNA REDDY, J

Note: LR copy be marked.
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